IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORIGINAL SIDE

INCOME TAX APPEAL NO. 837 OF 2002

The Commissioner of Income-tax,
Mumbai City-IX,Mumbai — Appellant

vs.

M/s.Vital Organic Pvt. Ltd. — Respondent

Mr.Vijay Kantharia with Mr.B.M. Chatterjee i/b.
Mr.K.B. Rao for the Appellant.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 15th September 2004

P.C.

In the memo of appeal, two questions of law have been proposed which read thus:

"(1) Whether on the facts & in the circumstances of the case and in law the income earned by assessee upon leasing out the plant and machinery even though the business carried out by the assessee was manufacturing and producing pharmaceutical products, would amount to 'Business income' qualifying for deduction u/s. 32AB of the I.T. Act, 1961 or amount to "Income from other sources" not qualifying deduction u/s. 32AB of the I.T. Act, 1961?

(2) Whether on the facts and circumstances of the case and in law, the Tribunal was correct in law upholding the decision of the CIT(A) interalia by which the additions of Rs.1,50,342/- made to the total income of the respondent company by the Assessing Officer on account of Under valuation of closing stock arising due to unutilized Modvat Credit?"

2. In so far as question (1) is concerned, we find that the controversy stands answered by the judgment of the Supreme Court in the case of Commissioner of Income-tax

v. 1. Shaan Finance (P) Ltd., 231 ITR 308.

3. As regards question (2), the learned counsel for the appellant conceded that the controversy stands concluded by the judgment of the Supreme Court in the case of Commissioner of Income-tax v. Indo Nippon Chemicals Co. Ltd., 261 ITR 275.

4. Thus, both the proposed questions stand answered by the judgement of the Supreme Court.

5. No substantial question of law arises.

6. Appeal is dismissed in limine.

(R.M. LODHA, J.)

(J.P. DEVADHAR,J.)